

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Marc A. Lieberman, Esq. (SBN 157318) Alan W. Forsley, Esq. (SBN 180958) Fredman Lieberman LLP 1875 Century Park East, Suite 2200 Los Angeles, CA 90067 Tel. 310.284.7350 Fax. 310.284.7352	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b>	
In re:  GREGORY MARX   Debtor(s).	CASE NO.: 2:09-22698-BR

**NOTICE OF SALE OF ESTATE PROPERTY**

<b>Sale Date:</b> 12/15/09	<b>Time:</b> 2:00 p.m.
<b>Location:</b> Edward Roybal Federal Building, Courtroom 1668, 255 East Temple Street, Los Angeles, CA 90012	

Type of Sale: ☒ Public ☐ Private Last date to file objections: \_\_\_\_\_

Description of Property to be Sold: The residential real property commonly known as 111 South Martel Avenue, Los Angeles,  
California 90036.

Terms and Conditions of Sale: See attached Motion for Order (1) Authorizing Sale of Real Property; (2) Approving  
Overbid Procedure; (3) Approving Payment of Commissions, and (4) Directing Turnover of Real Property; Memorandum  
of Points And Authorities And Declarations in Support Thereof (the "Motion").

Proposed Sale Price: \$1,190,000.00.

Overbid Procedure (If Any): Subject to a minimum overbid of \$5,000. See attached Motion.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Marc Lieberman Esq.  
Fredman Lieberman LLP  
1875 Century Park East, Suite 2200  
Los Angeles, CA 90067  
Tel. 310.284.7350 Fax 310.284.7352

Date: 11/18/09

**MARC A. LIEBERMAN (SBN 157318)**  
**ALAN W. FORSLEY (SBN 180958)**  
**FREDMAN LIEBERMAN LLP**  
1875 Century Park East, Suite 2200  
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Proposed attorneys for Alberta P. Stahl,  
Successor Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re  
GREGORY MARX,  
Debtor.

) Case No 2:09-22698-BR

) Chapter 7

) **MOTION FOR ORDER:**

- ) (1) **AUTHORIZING SALE OF REAL**  
) **PROPERTY;**  
) (2) **APPROVING OVERBID**  
) **PROCEDURE;**  
) (3) **APPROVING PAYMENT OF**  
) **COMMISSIONS; AND**  
) (4) **DIRECTING TURNOVER OF REAL**  
) **PROPERTY**

) Date: December 15, 2009

) Time: 2:00 p.m.

) Place: Courtroom "1668"  
) 255 East Temple St.  
) Los Angeles, California 90012

Alberta P. Stahl, the Chapter 7 trustee (the "Trustee") for the estate of Gregory Marx (the  
"Debtor"), hereby moves the Court for an order approving the proposed sale agreement ("Sale

1 Agreement”) attached hereto as Exhibit “1”; authorizing the Trustee consummate the Sale  
2 Agreement. The Trustee respectfully requests that the Court enter an order:

3 (a) Approving the sale of a parcel of residential real property commonly known as 111  
4 S. Martel Avenue, Los Angeles, California 90036 (the “Property”) on an as-is basis, without any  
5 recourse, contingencies, warranties or representations, to Jonathan Weiss and Bente Jacobsen  
6 (“Proposed Buyers”) for \$1,190,000.00 (“Initial Sale Price”), or to any person who appears at the  
7 hearing and submits a higher acceptable bid (“Sale”);

8 (b) Authorizing payment of the sale proceeds for any liens, the costs of sale, including  
9 without limitation the brokers' commissions, any unpaid real property taxes on a pro-rata basis, and  
10 miscellaneous escrow fees and closing costs;

11 (c) Authorizing the Trustee to execute any and all documents that may be necessary to  
12 consummate the sale of the Property;

13 (d) Approving the overbid procedures described herein;

14 (e) Directing the debtor to turnover the Property to the Trustee within 7 days of the  
15 entry of the order approving the sale;

16 (f) In the event the Debtor fails to turn over the Property, authorizing the Trustee to  
17 obtain a Writ of Possession-Eviction upon ex parte application to the Court; and granting such  
18 other and further relief as is just and proper

19  
20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **INTRODUCTION**

23 Alberta P. Stahl, the duly appointed, authorized and acting successor Chapter 7 trustee  
24 herein (the “Trustee”), subject to Court approval and overbid, has entered into a written counter-  
25 offer purchase and sale agreement (“Sale Agreement”) with Jonathan Weiss and Bente Jacobsen  
26 (the “Proposed Buyers”) for the sale of real property commonly known as 111 S. Martel Ave., Los  
27 Angeles, California 90036 (the “Property”) on an as-basis, without any recourse, warranties,  
28 contingencies or representations, with any liens and interests to attach to the net sale proceeds, for

1 \$1,190,000.00, or to any qualified over-bidder (the "Proposed Sale"). A copy of the Sale  
2 Agreement is attached as Exhibit "1" to the Declaration of Alberta P. Stahl.

3 The Property has been extensively marketed, resulting in the Sale Agreement. Based  
4 thereon, the Trustee believes in her best business judgment, that the proposed sale of the Property is  
5 in the best interest of the estate and all creditors, and therefore respectfully requests that the Court  
6 grant this motion (the "Motion") approving the proposed sale and the related relief necessary to  
7 consummate the sale, pursuant to the terms and procedures set forth below.

8  
9 **II.**

10 **BACKGROUND**

11 1. On May 22, 2009, Debtor filed a voluntary Chapter 7 petition (the "Petition Date"),  
12 Case No. 2:09-22698. Nancy Knupfer was appointed as Chapter 7 Trustee ("Initial Trustee").  
13 Thereafter, Nancy Knupfer resigned and Alberta P. Stahl became and now is the duly appointed,  
14 authorized, and acting successor Chapter 7 Trustee (the "Trustee").

15 2. On or about July 12, 2006, Debtor purchased the Property.

16 3. Debtor claimed a \$50,000 homestead exemption as to the Property on his Schedule  
17 C.

18 4. The Initial Trustee initially offered to allow the Debtor to purchase the Property  
19 from the estate, and when he declined, she caused the Property to be marketed by Coldwell Banker.

20  
21 **III.**

22 **THE PROPOSED SALE OF THE PROPERTY**

23 **A. The Terms of Sale**

24 On or about November 9, 2009, Proposed Buyers executed the Sale Agreement to purchase  
25 the Property from the Trustee, subject to Court approval and overbid. The sale is "as- is, where-  
26 is", without contingencies, recourse, representations or warranties, for \$1,190,000. The Sale  
27 Agreement is the product of arms-length negotiations, and requires, among other things, that  
28 escrow close no later than the first business day after eleven (11) calendar days following the entry

1 of an order approving this Motion ("Closing Date"), and that Proposed Buyers deposit by wire  
2 transfer or cashier's check the unpaid balance of the sale price plus any closing costs and/or  
3 adjustments three days prior to the Closing Date.

4 **B. Identity of Liens and Claims against the Property**

5 The Trustee obtained a preliminary Title Report, a copy of which is attached to the  
6 Declaration of Alberta P. Stahl. According to the Title Report, the liens and claims of record  
7 against the Property consist only of the following item:

8 1. The deed of trust recorded on July 12, 2006 as Instrument No. 06-1533361 in favor  
9 of Union Bank of California, N.A., and all subsequent assignees and/or beneficiaries to secure an  
10 indebtedness in the original principal sum of \$980,000.00 (the "Bank Lien");

11 The net proceeds to the estate will be approximately \$48,538 as follows:

12	Sale price:	\$1,190,000
13	Est. Union Bank payoff	<1,001,841>
14	Est. sales commissions (6%)	< 71,400>
15	Escrow Fees and other closing costs	<18,220>
	Homestead exemption	<50,000>
	<b>Net sale proceeds to estate:</b>	<b>\$48,538<sup>1</sup></b>

16  
17 **C. Proposed Treatment of Liens and Other Interests**

18 The Trustee proposes the Bank Lien being paid through escrow and any presently unknown  
19 liens be removed from the Property and attach to the net sale proceeds, subject to the costs of sale  
20 delineated in the Motion, with the same force, effect, validity and priority that it has with respect to  
21 the Property.

22 **D. Proposed Overbid Procedures**

23 The Trustee requests the Court approve the following procedure for overbids: Any party  
24 wishing to tender an overbid must deliver to the Trustee a cashier's check in the sum of \$35,700  
25 payable to "Alberta P. Stahl, Chapter 7 Trustee" not less that two (2) business days prior to the

26 <sup>1</sup> A more precise breakdown of the liens, commissions, fees, and costs associated with the Proposed Sale  
27 Agreement is set forth in the Seller's Estimated Net Proceeds statement attached as Exhibit "3" to the Declaration of  
28 Alberta P. Stahl.

1 hearing on the motion to approve the sale, complete and execute the over-bid form attached to the  
2 Declaration of Alan W. Forsley marked as Exhibit "4" and incorporated herein by this reference,  
3 without changes or conditions and must attend the hearing on the Motion or be represented by an  
4 agent with authority to participate in the over-bid procedure. The deposit shall be non-refundable  
5 in the event that the Court confirms the sale to that party and that party, for any reason whatsoever,  
6 fails to close the sale timely. The minimum initial overbid shall be \$1,195,000, with subsequent  
7 overbids in increments of not less than \$2,000. The successful over-bidder will be bound by all of  
8 the terms set forth in the Proposed Sale Agreement, except as to price, without contingencies,  
9 including no financing or physical inspection contingency.

10 The Trustee also proposes that the Court confirm a back-up buyer so that, in the event that  
11 the Proposed Buyers or winning bidder does not close within 11 days after the date of entry of an  
12 order approving the sale, the Trustee may retain the deposit of the Proposed Buyers or winning  
13 bidder and sell the Property to a back-up buyer for the amount of such back-up buyer's last bid.  
14 The Trustee retains sole discretion to accept or rejecting all overbids, subject to Bankruptcy Court  
15 approval.

16 **E. Payment of Commissions to Real Estate Brokers**

17 The Proposed Sale also contemplates the payment of real estate brokers' commissions  
18 through escrow. The listing agreement provides that an aggregate commission of 6% of the gross  
19 sales price will be paid from escrow to the Trustee's broker and the Buyer's broker in connection  
20 with the sale. Here, the Buyer is represented by Sotheby's International Realty. Therefore, the  
21 Trustee proposes that 3.00% of the commission be paid to Coldwell Banker as follows: 1.5% to  
22 Bill Friedman and 1.5% to Jane Schore, and that 3.00% be paid to Sotheby's International Realty,  
23 subject to the entry an order authorizing employment of Coldwell Banker.<sup>2</sup>

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24  
25 <sup>2</sup> On September 10, 2009, the Initial Trustee filed an application authorizing the Trustee to employ Coldwell Banker  
26 to market and sell the Property. On October 1, 2009, a related declaration re non-opposition was filed and proposed  
27 order authorizing the broker's appointment was uploaded. To date, an order approving the estate's application to  
28 employ broker has not been entered. The Trustee has filed a substantially similar application seeking approval of the  
same broker as the Initial Trustee on substantially the same terms.

1 To the extent the Court confirms the sale to an overbidder who is not represented by  
2 Sotheby's, the Trustee seeks authority to pay a maximum aggregate commission of 6% to all  
3 broker(s) involved.

4 **F. Marketing Efforts to Date**

5 The Property was listed in the Multiple Listing Service on or about September 15, 2009 at  
6 \$1,269,000.00. The listing price was not reduced. Additional marketing efforts include the  
7 following:

- 8 • Signage at the Property which was visible to passers-by.
- 9 • At least 14 online property for sale listing services, including but not limited to  
10 Realtor.com, Californiamoves.com, Frontdoors.com, Trulia.com and  
11 Janeschore.com;
- 12 • Broker and client mass e-mailings;
- 13 • Phone marketing to brokers; and
- 14 • Mailings to property owners in the immediate area.

15 The marketing resulted in multiple offers which were countered by the Initial Trustee. She  
16 accepted the then highest counter-offer, but that party was unable to obtain financing. Proposed  
17 Buyers' offer is higher than even the offer that fell through.

18 Subsequent to the execution of the Sale Agreement, the Trustee's Brokers have continued to  
19 market the Property in an effort to procure potential overbidders.

20 The Trustee's brokers have been in contact with parties who expressed prior interest in the  
21 Property, will advise them as to the hearing date and time of the sale and will provide them with  
22 copies of the pleadings and the proposed overbid procedures as requested. In addition, the Property  
23 continues to be listed on the Multiple Listing Services and such listings have been amended to  
24 include information concerning the hearing on the sale and bidding procedures. The Property sale  
25 notice is being posted with the Clerk's office pursuant to Local Bankruptcy Rule 6004-2.

1 **G. Good Faith Finding**

2 The Trustee also requests the Court make a finding that the party to whom the sale is  
3 confirmed and any back-up bidders are good-faith purchasers within the meaning of 11 U.S.C. §  
4 363(m).

6 **IV.**

7 **ARGUMENT**

8 **A. The Court Should Approve the Sale of the Property.**

9 **1. The Proposed Sale is Authorized under the Code and is, in the Trustee's**  
10 **Business Judgment, in the Best Interest of the Estate and Creditors.**

11 11 U.S.C § 363(b)(1) of the Code provides that "the trustee, after notice and a hearing, may  
12 use, sell or lease, other than in the ordinary course of business, property of the estate." Courts  
13 require that the proposed sale be made in good faith and in the trustee's business judgment. See  
14 In re 240 North Brand Partners, Ltd., 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) ("debtors who wish  
15 to utilize § 363(b) to dispose of property of the estate must demonstrate that such disposition has a  
16 valid business justification."), In re Moore, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990)  
17 (recognizing that business judgment rule applies to trustee's disposition of estate property). Courts  
18 also consider whether the sale is in the best interest of creditors. See, e.g., In re Huntington, Ltd.,  
19 654 F.2d 578, 589 (9th Cir. 1981); In re Equity Funding Corp., 492 F.2d 793, 794 (9th Cir. 1974);  
20 In re Canyon Partnership, 55 B.R. 520, 525 (Bankr. S.D. Cal. 1985).

21 The Trustee believes that the proposed sale will maximize the value of the estate's interest  
22 in the Property. The sale is subject to overbids, so any and all parties wishing to purchase the  
23 Property for a higher price may do so. As a result, the Trustee believes in her business judgment,  
24 that the proposed sale will yield approximately \$48,538 for the estate and is therefore in the best  
25 interest of the estate and its creditors.

26 **2. Good Faith Purchaser Finding**

27 A purchaser of property is protected from the effects of reversal on appeal of the  
28 authorization to sell or lease as long as the Court finds that the purchaser acted in good faith and



1 the appellant fails to obtain a stay of the sale. See 11 U.S.C. § 363(m). A good faith purchaser is  
2 one who buys in good faith and for value. In re Ewell, 958 F.2d 276, 281 (9th Cir. 1992).  
3 Although the Code does not define “good faith,” courts have provided guidance as to the  
4 appropriate factors to consider. *Id.* (lack of good faith generally shown by fraud, collusion between  
5 the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of  
6 other bidders); In re Pine Coast Enters., Ltd., 147 B.R. 30, 33 (Bankr. N.D. Ill. 1992) (“[t]he  
7 requirement that a purchaser act in good faith speaks to the integrity of its conduct in the course of  
8 the sale proceeding.”); Kham and Nate’s Shoes No. 2 v. First Bank, 908 F.2d 1351, 1355 (7th Cir.  
9 1990) (“[t]he purpose of section 363(m) is to disable courts from backtracking on promises with  
10 respect to bankruptcy sales in the absence of bad faith.”).

11 Here, as set forth in the declarations of the Proposed Buyers, Jane Schore and Alberta P.  
12 Stahl, the Proposed Buyers were procured solely as a result of public marketing efforts. The  
13 Trustee further submits that negotiations with the Proposed Buyers were at arm’s-length. The  
14 Trustee has no relationship with the Proposed Buyers other than as buyer/seller and there was no  
15 self-dealing associated with this sale. Accordingly, the Trustee requests that the Court find that the  
16 party to whom the Court confirms the sale and any backup buyer are good faith purchasers of the  
17 Property, within the meaning of 11 U.S.C §363(m).

18  
19 **V.**

20 **CONCLUSION**

21 Based upon the foregoing, the Trustee respectfully requests that the Court:

22 (1) Confirm the proposed sale of the Property to the Proposed Buyers or successful  
23 over-bidder on the indicated terms;

24 (2) Authorize the Trustee to pay the costs of sale incurred in selling the Property,  
25 including the real estate brokers' commissions through escrow in the maximum sum of 6% of the  
26 gross sale price;

27 (3) Find that the party to whom the Court confirms the sale and any back-up buyer are  
28 good faith purchasers of the Property, within the meaning of 11 U.S.C § 363(m);

1 (4) Direct the Debtor to turn over the Property to the Trustee within 7 days of the entry  
2 of an order approving the sale;

3 (5) In the event the Debtor fails to turn over the Property, authorizing the Trustee to  
4 obtain a Writ of Possession-Eviction upon ex parte application to the court;

5 (6) Authorize the Trustee to take all appropriate action to effectuate the sale; and

6 (7) Provide such other and further relief as the Court deems just and proper.

7 Dated: November 18, 2009

FREDMAN LIEBERMAN LLP

8  
9  
10 By: 

MARC A. LIEBERMAN

ALAN W. FORSLEY

Proposed attorneys for Alberta Stahl,  
Chapter 7 Trustee

**DECLARATION OF ALBERTA P. STAHL**

I, Alberta P. Stahl, declare:

1. I am the successor Chapter 7 trustee for the estate of Gregory Marx (the "Debtor"). I have personal knowledge of the facts in this declaration or informed on information and believe, and, if called as a witness, I could and would testify competently to these facts.

2. This declaration is being filed in support of the attached motion (the "Motion").

3. Debtor's estate includes a parcel of real property commonly known as 111 South Martel Avenue, Los Angeles, California 90036 (the "Property").

4. Attached hereto as Exhibit "1" is a true and correct copy of the counter-offer purchase and sale agreement (the "Sale Agreement") for the Property to Jonathan Weiss and Bente Jacobsen (the "Buyers"), subject to Bankruptcy Court approval and overbid.

5. I have read the within Motion to Sell the Property, which my counsel has prepared on my behalf. I believe that the sale of the Property for \$1,190,000.00, subject to overbid, is a fair price based upon evaluation and advice from the real estate brokers.

6. The Buyers were procured as a result of extensive marketing efforts through my brokers, after counter-offers and arms-length negotiations.

7. I have no relationship to or familiarity with the Buyers, and I am advised that the Buyers have no connection with the Debtor or anyone else associated with this estate or the administration of the estate.

8. I accepted a prior offer but that party was unable to obtain financing. The \$1,190,000 price is the highest offer I have received on the Property.

9. A preliminary title report on the Property was obtained from Advantage Title, Inc. ("Title Report"). A true and correct copy of the Title Report is attached hereto as Exhibit 2 and incorporated herein by reference.

10. I estimate that the net proceeds to the estate will be approximately \$48,538 as set forth in the Seller's Estimated Net Proceeds statement attached hereto as Exhibit "3."

1 11. Barring any overbid, in my business judgment the Proposed Sale is in the best  
2 interests of the estate and its creditors, and should be approved.

3 Executed at Los Angeles, California on November 18, 2009.

4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct.

6   
7 ALBERTA P. STAHL

**DECLARATION OF JANE SCHORE**

I, Jane Schore, declare:

1. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I am a duly licensed salesperson in the State of California and am employed as an agent for Coldwell Banker, located at 9000 W. Sunset Blvd., Los Angeles, CA 90069, and I am one of the real estate agents that has been retained by initial trustee Nancy Knupfer and then the successor Chapter 7 Trustee, Alberta P. Stahl (the "Trustee") in the bankruptcy case of Gregory Marx, Chapter 7 debtor herein (the "Debtor"). The Trustee has solicited the assistance of Coldwell Banker to market and sell that certain parcel of real property located at 111 S. Martel Avenue, Los Angeles, California (the "Property").

3. The Trustee has entered into a purchase and sale agreement with the Buyer for the Property, subject to Court approval, at \$1,190,000 (the "Sale").

4. The Property was listed in the Multiple Listing Service and <sup>CARATS</sup> ~~Alameda~~ Multiple Listing Service on or about September 15, 2009 at \$1,269,000. The listing price was not reduced. Additional marketing efforts include the following:

- Placing one for sale sign on the front lawn of the Property.
- Listing the Property with at least 14 online property-for-sale websites, including, but not limited to, Realtor.com, Californiamoves.com, Frontdoors.com, <sup>Trulia</sup> ~~Treva~~l.com and Janeschore.com;
- Sending e-mailings to other real property brokers;
- Contacting other real property brokers by phone; and
- Delivering Property fliers to residents in the immediate area.

The marketing resulted in multiple offers. The \$1,190,000 offer of Jonathan Weiss and Bente Jacobsen ("Proposed Buyers") was the highest and best offer.

As a result of this extensive marketing, the Trustee received the Proposed Buyers' offer. Subsequent to entry of the Proposed Sale Agreement, I have continued to market the Property in an effort to procure potential over-bidders. In particular, I continued to work with a previous offeree,

1 who claims to now have financing and who may qualify as an over-bidder.

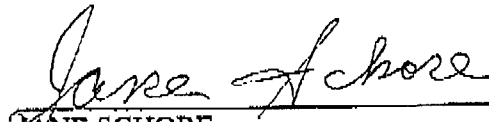
2 5. My partner William Friedman and I have been in continuous contact with parties  
3 who expressed prior interest in the Property, will advise them as to the hearing date and time of the  
4 sale and will provide them with copies of the pleadings and the proposed overbid procedures as  
5 requested. In addition, the Property continues to be listed on the Multiple Listing Services and  
6 such listings shall be amended to include information concerning the hearing on the sale and  
7 bidding procedures.

8 6. Based on my experience as a real estate agent, I believe that the \$1,190,000 price  
9 reflects the fair market value of the Property.

10 7. I do not have any familiarity with the Buyer. I believe that the Proposed Buyers  
11 have no association with the Debtor, the estate, or any of the professionals employed by the estate.

12 I declare and verify under penalty of perjury that the foregoing is true and correct to the best  
13 of my knowledge.

14 Executed on this \_\_\_\_ day of November, 2009, at Los Angeles, California.

15  
16   
17 JANE SCHORE  
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**DECLARATION OF ALAN W. FORSLEY**

I, Alan W. Forsley, declare:

1. I am an attorney, duly licensed and entitled to practice in the State of California and before the above-mentioned court. I am an associate with the law firm of Fredman Lieberman LLP, counsel for Alberta P. Stahl, the Chapter 7 trustee (the "Trustee") for the estate of Gregory Marx (the "Debtor"). I have personal knowledge of the facts in this declaration and, if called as a witness, I could and would testify competently thereto.

2. Attached as Exhibit "4" hereto is a true and correct copy of the over-bid form for prospective overbidders to fill out and execute. A copy of the over-bid form is also attached to the Notice of the instant Motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of November 2009, at Los Angeles, California.

  
ALAN W. FORSLEY